Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

In Re: JAMES CONSTANT,

Debtor,

JAMES CONSTANT

Petitioner,

v.

ADVANCED MICRO-DEVICES, INC.
DAVID L. RAY, Trustee;
SALTZBURG, RAY & BERGMAN;

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

James Constant
1603 Danbury Dr
Claremont, CA 91711
(909) 624-1801

Pro-per Petitioner

14PP

QUESTIONS PRESENTED

Has the Ninth Circuit Court of Appeals decided an important question of patent law in an abbreviated manner which makes it impossible for the petitioner to tell why his appeal was denied and why he should not petition this Court?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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Bankruptcy Rule 7052

Bankruptcy Rule 9014

TABLE OF AUTHORITIES CITED

CASES **Pages**

Hydrospace-Challenger, Inc. v. Tracor/Mas, Inc.
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OTHER AUTHORITY

33 Fed Proc L Ed 77:311 at page 322. 3

STATUTES

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35 USC 261 2

BANKRUPTCY RULES

7052 1,2

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CALIFORNIA CIVIL PROCEDURE CODES

695.010 2

701.520 2

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Petitioner, James Constant, respectfully prays that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Ninth Circuit entered on 19 March, 1999 affirming the district court's Order Re Motion of Advanced Micro-Devices, Inc. to Overrule Objections of James and Argerey Constant to Intended Sale of Patents and Copyrights and to Declare Waiver of Argerey Constant's Third Party Lien Claim.

OPINIONS BELOW

The unpublished order of the Court of Appeals appears in Appendix A to this Petition. The district court's order appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeal's Opinion in this matter was entered on 19 March, 1999. This Court's jurisdiction is invoked under Title 28 USC 1254(1).

STATUTORY PROVISIONS INVOLVED

Bankruptcy Rules 7052 and 9014 are set forth in Appendix C.

STATEMENT OF THE CASE

On 22 October, 1992, to enforce its money judgement, the district court entered an order to assign debtor's patents

and copyrights to the U.S. Marshall. Debtor appealed the assignment and the Ninth Circuit held that debtor's patents can be assigned to the U.S. Marshall under California state laws (Cal. Civ. Proc. Code 695.010). A petition for certiorari was denied. SCt No. 93-1518.

On 18 August, 1998 debtor was served a Notice of Intended Judicial Sale of United States Letter Patents and Copyrights (Cal. Civ. Proc. Code 701.520(b)) to which debtor made objection asserting lack of jurisdiction for assigning and selling patents under California state laws.

On 23 October, 1998, respondent AMD filed its Motion to Overrule Objections to Intended Sale of Patents and Copyrights and to Declare Waiver of Third Party Lien Claim asserting that debtor's objections *inter alia* were procedurally improper and were res judicata and collateral estoppel in view of the Ninth Circuit's earlier decision. Debtor made opposition to AMD's motion asserting that federal patent statute 35 USC 261 preempts the use of California state laws and procedures for the assignment and sale of patents. The district court ordered the sale of patents by the U.S. Marshall, App. B, and debtor appealed to the Ninth Circuit which held that the notice of appeal lacked merit and would not proceed, App. A.

The basis for federal jurisdiction, in whole or part, in the district court was 28 USC 1338.

REASONS FOR GRANTING THE WRIT

Under Bankruptcy Rule 9014, whenever there is an actual dispute before the bankruptcy court, the litigation to resolve that dispute is a contested matter which, therefore, requires findings and conclusions under Bankruptcy Rule 7052. See *In re Hotel Hollywood* (BAP CA9 1988) 95 B.R. 130.

Neither court below provided findings and conclusions which would make definite what was decided in order to apply the doctrines of res judicata and collateral estoppel, and permit debtor to determine the appealability of his case and to permit this Court to make an informed decision about the facts and law. For citations see 33 Fed Proc L Ed 77:311 at page 322.

A court of appeals will remand where the district court's findings lack sufficient particularity to enable the reviewing court to determine rather than speculate as to the underlying facts upon which the lower court relied and to judge whether the law has been correctly applied. *Schneiderman v. United States* (1943) 320 US 118, 87 LEd 1796, 63 SCt 1333, *reh. den.* 320 US 807, 88 LEd 488, 64 SCt 24; *Hydrospace-Challenger, Inc. v. Tracor/Mas, Inc.* (CA5 1975) 520 F2d 1030. Remand is necessary if the facts are disputed. *Richmond Leasing Co. v. Capital Bank, N.A.* (CA5 1985) 762 F2d 1303, 12 CBC2d 1202, CCH Bankr L. Rptr 70593.

Certiorari should be granted for the reasons that the Ninth Circuit has decided the important federal question of ownership and sale of federal patents, in a way which makes it impossible for the petitioner to tell why his appeal was denied and why he should not petition this Court on merits.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the Order of the Court of Appeals in this matter[1]

Dated: 28 May, 1999

Respectfully submitted

James Constant
Pro Per Petitioner

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[1] If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for appropriate findings and conclusions.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(Ent. 3/19/99)

In re: JAMES CONSTANT,	) No. 94-80318
	) DC#CV 91-5456R
Respondent	) Central Calif.
	)
	) ORDER
_____	)

Before: SNEED, KOZINSKI and LEAVY Circuit Judges

This Court has reviewed the notice of appeal and accompanying documents filed December 21, 1998 in the above referenced district court docket pursuant to the pre-filing review order entered in this docket. Because the appeal lacks merit, it shall not be permitted to proceed.

A certified copy of this order served on the district court shall act as and for the mandate of this court.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(Ent. 11/24/98)

JAMES CONSTANT,	) No: 91-5456R
	)
Plaintiff	) Bankruptcy Case No:
	) SV 89-19270 KL
v.	) Adv. No: 91-06283
	)
ADVANCED MICRO-DEVICES, INC., et. al.,	) ORDER RE MOTION OF ADVANCED MICRO-DEVICES, INC. TO OVERRULE OBJECTIONS OF JAMES AND ARGEREY CONSTANT TO INTENDED SALE OF PATENTS AND COPYRIGHTS AND DECLARE WAIVER ARGEREY CONSTANT'S THIRD-PARTY LIEN CLAIM
Defendants.	)
	) Date: Nov. 16, 1998
	) Time: 10:00 a.m.
	) Judge: Hon. M. Real

The motion of defendant Advanced Micro Devices, Inc. (AMD) to overrule James and Argerey Constant's objections to intended sale of patents and copyrights and to declare waiver of Argerey Constant's third-party lien claim, came before the Court for hearing on Nov. 16, 1998. The Court having considered the papers and arguments submitted by AMD and James and Argerey Constant, IT IS HEREBY ORDERED THAT:

1. James and Argerey Constant's objections to the intended sale of patents and copyrights are overruled;.

2. Argerey Constant has waived any priority her lien or security interest may have had over AMD's execution lien in the following patents and copyrights originally ordered assigned by the Court's October 19, 1992 Order:

U.S. Patent No.	Title
5,007,083	Secure Computer
4,920,313	Gravitational Mass Detector
4,820,006	Holographic Identification System Using Incoherent Light
4,438,491	Computer Having Plural IC Chips with each Chip Including a Transceiver
4,006,351	Recursive Filter Implemented as a Matched Clutter Filter
4,107,458	Cipher Computer and Cryptographic System
4,080,660	Digital Signal Time Scale Inversion
3,950,635	Digital Matched Filter and Correlator Using Random Access Memory

U.S. Copyright No.	Title
TXu 465979	Fuzzy Logic Program in GW Basic Language
TXu 293728	Newton's Theory Predicts Einstein's Tests of Gravitation
TXu 1323228	Invention Secrecy Score: Government 30,000 Inventors 0
TXu 186185	Gravitational Action

Each of the above-listed patents and copyrights may be applied toward the satisfaction of AMD's judgement against James Constant free of Argerey Constant's security interest or lien therm.

3. The United States Marshal is directed to proceed forthwith with the sale of the above-listed patents and copyrights to satisfy AMD's judgement. Unless otherwise ordered by the Court, the United States Marshal shall hereafter disregard any further objections, arguments or papers by James or Argerey Constant in connection with the sale or disposition of these assets, or in connection with the payment of the proceeds of such sale to AMD.

Dated: Nov. 17, 1998

Manuel L. Real
United *States* District Judge

Bankruptcy Rule 7052
applies Civil Rule 52

(a) In all actions tried upon the facts ... the court shall find the facts specially and state separately its conclusions of law thereon ...

Bankruptcy Rule 9014
Advisory Committee Note

Whenever there is an actual dispute ... the litigation to resolve that dispute is a contested matter.